

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN F. GABOWER

Appeal No. 2001-0176
Application No. 08/958,595

HEARD: August 15, 2002

Before KIMLIN, KRATZ, and PAWLIKOWSKI, Administrative Patent Judges.

KRATZ, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-20, which are all of the claims pending in this application.

BACKGROUND

Appellant's invention relates to an electromagnetic interference (EMI) shield for electrical devices. An

understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. An EMI shield comprising
a thin-walled shape formed of thermoformable polymeric
material,
said shape having an outer surface and an inner surface and
edges,
said shape having deposited thereon a coating of conductive
metal vapor,
said coating of thickness of approximately 1 to 50 microns.

The prior art references of record relied upon by the
examiner in rejecting the appealed claims are:

Shimmyo	5,008,487	Apr. 16, 1991
Gallagher	5,214,242	May 25, 1993
Koskenmaki et al. (Koskenmaki)	5,226,210	Jul. 13, 1993

Claims 1-5, 10, 12-15 and 20 stand rejected under 35 U.S.C.
§ 103 as being unpatentable over Koskenmaki. Claims 6, 7, 9, 18
and 19 stand rejected under 35 U.S.C. § 103 as being unpatentable
over Koskenmaki in view of Gallagher. Claims 8, 11, 16 and 17
stand rejected under 35 U.S.C. § 103 as being unpatentable over
Koskenmaki in view of Gallagher and Shimmyo.

We refer to appellant's briefs and to the examiner's answer
for an exposition of the respective viewpoints expressed by
appellant and the examiner concerning the rejections.

OPINION

Upon careful review of the entire record including the respective positions advanced by appellant and the examiner with respect to the rejections before us, we find ourselves in agreement with appellant's viewpoint since the examiner has failed to carry the burden of establishing that the herein claimed subject matter is obvious within the meaning of 35 U.S.C. § 103 on this record. Accordingly, we will not sustain the examiner's rejections.

At the outset, we note that all of the claims on appeal require a shaped EMI shield comprising a 1-50 micron thick coating of conductive metal vapor deposited on a thin-walled thermoformable polymeric material. In applying Koskenmaki to the claimed subject matter, the examiner (answer, page 4) refers to column 1, lines 52-60 of that reference for a teaching of a conductive metal vapor coating and column 1, lines 42-50 and column 5, lines 54-58 for a teaching of a thermoformable polymeric material. However, the examiner simply does not explain how the prior art vapor deposition coatings referred to in column 1 of Koskenmaki relate to the thermoformable polymeric material discussed in the background section of Koskenmaki or the thermoformable polymeric material substrate on which a mat of metal strands are embedded. In this regard, the examiner has not

established how the thermoformable polymeric material substrate of Koskenmaki meets the thin-walled shaped limitation of claim 1. Nor has the examiner satisfactorily explained why one of ordinary skill in the art would have been led to employ a 1-50 micron thick conductive metal vapor coating on such a thin-walled shaped thermoformable material as opposed to using the metal fiber mat taught by Koskenmaki. Moreover, the examiner has not shown how either Gallagher or Shimmyo would cure the above-noted deficiencies with respect to the separately stated rejections employing those references.

It is perhaps even more significant that, in assessing the patentability of the claimed subject matter, the examiner's answer does not even address much less refute the declaration evidence presented by appellant. On such a record, we can find no basis for affirming the stated rejections.

CONCLUSION

The decision of the examiner to reject the appealed claims under 35 U.S.C. § 103 over the applied prior art for the reasons as stated in the answer is reversed.

REVERSED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
PETER F. KRATZ)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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BEVERLY A. PAWLIKOWSKI)	
Administrative Patent Judge)	

PFK/sld

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APPEAL NO. - JUDGE KRATZ
APPLICATION NO.

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DECISION: **ED**

Prepared By:

DRAFT TYPED: 09 Oct 03

FINAL TYPED: